

January 17, 2020

*Via electronic mail to [rules@dcappeals.gov](mailto:rules@dcappeals.gov)*

The Honorable Julio A. Castillo  
Clerk  
District of Columbia Court of Appeals  
430 E Street, N.W.  
Washington, D.C. 20001

**Public comments on proposed amendment to Rule 35(a) in response to Notice M-266-19**

Dear Mr. Castillo:

On behalf of the Legal Aid Society of the District of Columbia (Legal Aid), and David Reiser in his personal capacity as a member of the bar of this Court and as a volunteer with Legal Aid, we urge the Court to amend Rule 35(a) to conform to Federal Rule 35(a) (or, alternatively, to dissolve the stay that seems to have prevented conformity with the Federal Rule as amended in 2005 by operation of law). D.C. Code §§ 11-743 and 11-946 reflect Congress' determination that the District of Columbia courts should adhere to the counterpart federal rules unless the Court concludes that District of Columbia-specific circumstances justify a departure. We are not aware of any substantial District of Columbia-specific reason for using a method to count votes for purposes of en banc review in the District of Columbia Court of Appeals that is different from the method that applies in the federal appellate courts. To the contrary, the main difference of which we are aware seems to cut in favor of adherence by the District of Columbia Court of Appeals to the federal rule. The District of Columbia Court of Appeals is, for all practical purposes, the final word on District of Columbia law, while the Supreme Court can rectify errors by the federal circuits in interpreting federal law. The current District of Columbia rule may inhibit the correction of an erroneous ruling by the en banc Court by counting recused judges as votes against review. En banc review is already rare in the District of Columbia Court of Appeals, especially by comparison to other state high courts. Although there are reasons why the Court does not often sit en banc, we do not think the Court's rules should be an additional impediment to correction of errors by the full Court.

We recognize that it might be better in some instances to defer consideration of a recurring question that may be presented in a case from which one or more active judges has recused herself until it can be decided by the full bench. But we think in those cases the balance between rendering justice promptly in each individual case and avoiding or limiting the effects of recusal is better handled by comity and collegiality among judges of the Court than by a rule that may prevent en banc review even when favored by a majority of active judges who are not recused.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Chinh Q. Le". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chinh Q. Le,  
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